United Nations S/2002/1199

Security Council

Distr.: General
29 October 2002

Original: English

Letter dated 25 October 2002 from the Permanent Representative of South Africa to the United Nations addressed to the President of the Security Council

I should like to refer to the final report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (S/2002/1146).

The Security Council is aware of the commitment the South African Government has made towards achieving a peaceful resolution of the conflict in the Democratic Republic of the Congo, as well as in the Great Lakes Region as a whole. My Government believes that the achievement of peace in the Democratic Republic of the Congo is essential for contributing to the renewal of the African continent and the achievement of the goals of the New Partnership for Africa's Development, a programme of the African Union.

Furthermore, South Africa has taken all possible measures to implement Security Council decisions on the Democratic Republic of the Congo. We have taken every step to assist panels that have been created by the Security Council with regard to conflicts in Africa.

However, we would like to inform the Security Council that South Africa is disappointed with the content of the final report presented to the Council by Ambassador Mahmoud Kassem; the methodology the Panel used in gathering its information and the conclusions and recommendations the Panel makes in its report. South Africa would urge that the Security Council instruct the Panel to investigate further and substantiate its allegations and recommendations made in the report. The Panel's report contradicts the aims and intentions of the Security Council.

We are particularly disappointed because the South African Government welcomed the Panel when it visited our country and arranged for the Panel to meet with various senior officials from departments and agencies that were ready to assist the Panel in its work. The Council will notice that the examples cited later in my letter are contrary to the Panel's claim of having "made every effort to fairly and objectively evaluate the information it has gathered". A difficulty that we experienced was the quality and extent of the information that the Panel made available to the South African authorities. The information upon which South African authorities were expected to conduct the necessary follow-up investigations was either incomplete or never given.

02-66178 (E) 281002

We would like to address some of the specific issues that have been raised by the Panel with regard to South Africa, South African-based companies and individuals.

In paragraph 31, the report states that "Also working with ZDF is a convicted criminal based in South Africa, Nico Shefer, who has arranged for Zimbabwean officers to be trained in diamond valuation in Johannesburg. Mr. Shefer's company, Tandan Holdings, has a 50 per cent stake in Thorntree Industries, a joint venture diamond-trading company with ZDF". On 14 June 2002, the South African Government was requested by the Panel to provide information concerning the trading, whether openly or clandestinely, of Congolese diamonds in South Africa or the transport of Congolese diamonds through South Africa, by the Minerals Business Company (MBC). It was stated by the Panel that the South African-owned or -based company Thorntry (or Thorntree) reportedly has an agreement with MBC to trade its shipments of Congolese diamonds. On 31 July 2002, the South African Government informed the Panel that it had no information to verify the allegation concerning the transportation of diamonds, bought by Thorntree, through South African territory. It should also be noted that the issue of Mr. Shefer arranging for Zimbabwean officers to be trained in diamond valuation in Johannesburg has never been raised by the Panel with the South African Government. The question of Mr. Shefer and Thorntree Industries is similarly raised in paragraph 58 of the report.

In paragraph 52, the report states that "Mr. Al-Shanfari instructed his security chief to smuggle diamonds from the Sengamines concession to Johannesburg, South Africa, and deliver them to Ken Roberts, the chief executive of Serengeti Diamonds". This information has never been shared with the South African Government nor was this ever the subject of an enquiry addressed to the South African Government by the Panel.

In paragraph 139, the report identifies South Africa as one of 11 African States through whose territory goods originating in the Democratic Republic of the Congo are likely to pass. The Panel further states that it submitted questions to all of these countries and held substantive discussions with government representatives from five countries. The Panel enquired about relevant legislation, investigations into the flow of the commodities, measures taken to curb those flows, other possible action to be taken and those Governments' needs for assistance. According to the report, virtually none of the countries that responded to the Panel's questions had conducted any investigations or adopted any specific procedures for the identification or inspection of the transiting of commodities from the Democratic Republic of the Congo. The report goes on to state that South African officials confirmed the seizure of a sizeable clandestine shipment of diamonds from the Democratic Republic of the Congo, but provided no details. Also stated is that none of the authorities in these countries gave any indication that Congolese resources traded through their territories should or could be regarded as conflict goods and that almost none of the countries proposed any meaningful measures to help curb trade in Congolese commodities that are tainted by criminality and militarization.

In September 2001, the Panel approached South Africa regarding procedures followed by South African law enforcement agencies in combating smuggling activities and organized crime, as well as a chart clarifying the division of authorities and responsibilities of the different authorities. On 14 June 2002, the South African Government provided a detailed description of the role and functions

of law enforcement agencies in South Africa. In addition, the Government provided the Panel with details of the relevant legislation utilized in curbing smuggling and organized crime. The Government, however, stated that the South African law enforcement agencies were not aware of any significant or organized groups that were engaged in smuggling or other illegal activities involving diamonds, gold, coltan and other natural resources originating from the Democratic Republic of the Congo. The Panel had requested the South African Government for examples of actual cases of smuggling made by the South African law enforcement agencies originating from the Democratic Republic of the Congo and countries involved in the conflict. The information that was provided by the South African authorities confirmed that a national of the Democratic Republic of the Congo was arrested at Johannesburg International Airport in December 2001 with 13 diamonds in his possession. The Panel was informed that the individual had appeared in court, but that the case had been postponed until June 2002. It was further explained to the Panel that since the court case was still pending (sub judice), no additional information could be provided. This was the only information that was provided to the Panel regarding the seizure of diamonds that had a connection to the Democratic Republic of the Congo. In the information provided to the Panel it was not possible to indicate the origin of the diamonds.

In annex III to the report, the Panel lists those business enterprises that it considers to be in violation of OECD Guidelines for Multinational Enterprises. Twelve South African companies are listed under annex III. Although no substantiating evidence for these listings is provided, the report states that "Countries which are signatories to those Guidelines and other countries are morally obliged to ensure that their business enterprises adhere to and act on the Guidelines". With regard to the specific companies mentioned:

- South Africa has never been approached by the Panel regarding a company by the name of African Trading Corporation.

- Anglovaal, Banro Corporation, Carson Products, Mercantille CC, Saracen, Swanepoel, Track Star Trading 151 (Pty) Ltd. Zincor, Iscor and Orion Mining Inc. have never been mentioned in any of the Panel's previous reports, nor has any information related to their business activities or conduct ever been shared with the South African Government, nor was any of these companies ever the subject of an enquiry addressed to the South African Government by the Panel.

On 14 June 2002, the South African Government was requested by the Panel to provide a list of all South African, and South African registered companies operating in or with the Democratic Republic of the Congo. During the meeting with the Panel, the South African authorities specifically raised their serious concerns with the Panel about its queries regarding South African companies operating in the Democratic Republic of the Congo, without any indication as to their participation in the illegal exploitation of the natural resources of the Democratic Republic of the Congo. South Africa underlined the fact that unsubstantiated queries by the Panel about the activities of companies operating legally and above board in the Democratic Republic of the Congo could be interpreted as casting unwarranted aspersions on their activities.

In this context also, I should also like to note the fact that South Africa is not a signatory to the OECD Guidelines. Although we support its objectives, we don't understand how the Panel can use this mechanism as a means of accountability.

The report's statements about South Africa, South African companies and South African individuals consequently do not appear to be substantiated by hard evidence or information. Nor does the Panel draw any distinction between legal and illegal activities of companies in its report. In their interaction with the Panel, the South African authorities underlined the difficulties that are experienced when dealing with the vagueness of certain queries received. It was pointed out that the provision of more detailed and accurate information would assist the South African authorities to address the issues raised.

I understand that the views conveyed in this letter are critical of the final report and that they bring into question the approach and methodology that has been adopted in the report's compilation. It is our hope that the Council will take these concerns into account in its consideration of this report and of any new mandate that may be given to the Panel. We suggest that the Council should provide clear and specific guidelines on the functioning, approach and operating standards of any future mechanism it may decide to establish with regard to the Democratic Republic of the Congo.

The Council will understand that South Africa regards this in a serious light, not only because of its imputations, but also because of the role that South Africa continues to play, both in its national capacity and as the Chair of the African Union, in achieving lasting peace, security, stability and prosperity for the Democratic Republic of the Congo and its people.

It would be appreciated if the letter could be circulated as a document of the Security Council.

(*Signed*) Dumisani S. **Kumalo**
Ambassador and Permanent Representative